IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O O.C.J

Writ Petition No.3l84 of l99l

Madhukar Mahadeo Gurav...Petitioner
vs
The State of Mah and ors..Respondents
Mr.Mihir Desai for petitioner
Mr.B.V.Phadnis for respondent nos. 2 to 4
Mr.S.K.Talsania for respondent nos 5 to 8

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated l4.l.2005

P.C:

l. The petitioner is employed with the University of Bombay as Senior Clerk. The petitioner joined the University of Bombay as Class IV employee from l7th March l969 and confirmed as Class IV employee in December l970. The petitioner was promoted as Class III employee on and from 30th June l977. The petitioner was thereafter promoted to the post of Senior Clerk with effect from 26th October l978. The petitioner claims that on the basis of his seniority,he is entitled to higher promotion to the post of Head Clerk in general cadre or to the post of Assistant Accountant in accounts cadre. The petitioner is seeking to quash and set aside the Executive Council Resolution dated 24th December l985 in Item No.4l being ultravires the Maharashtra Act 22 of l974 and rule l4(l) and (2) of the

Maharashtra Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-teaching employees) Rules, l984. The petitioner is also seeking to quash and set aside the promotion of respondent nos. 5 to 8 who have according to the petitioner superseded him wrongfully and unjustly.

2. The case of the petitioner is that as per rule l4(l) and (2) of the Standard Code, only the date of confirmation in a cadre determines one's seniority and therefore, the petitioner is entitled, according to his seniority based on the said rule to be appointed to the post of Head Clerk in the general cadre or to the post of Assistant Accountant in the accounts cadre. The petitioner submits that the Executive Council in its resolution dated 24th December l985, Item no.4l resolved that Class III and Class IV employees who were granted continuous service from 24th September l977 should be given the benefits of continuous service from the date of their initial appointment, including the service put in by them as substitute in leave vacancies and that their seniority be fixed according to the date of their first appointment by condoning the breaks in their

service between the period of their initial appointment and 3lst March l976. The petitioner submits that on the basis of the said resolution the Seniority Cell prepared fresh seniority list wherein the petitioner was shown junior to those who were junior to him in the earlier list and in particular to the respondent nos.5 to 8. who were confirmed on 24th September l977. The petitioner submits that ruls l4(l)and(2) of the Standard Code lay down that seniority of an employee in a cadre under the University shall be determined on the basis of the date of continuous service in that cadre. It is further provided in the said rule that the date of seniority showing the service on probation or as the case may be the date of probation shall be taken as the date of continuous service for this purpose. Sub-rule (2) of rule l4 makes it clear that the employee confirmed in a permanent post shall rank higher to that appointed in officiating capacity. Therefore according to the petitioner the resolution dated 24th December l985 in Item no.4l is ultravires rule l4(l)and(2) of the Standard Code.

3. We have heard Mr.Mihir Desai appearing for the petitioner, Mr.Phadnis appearing for respondent

nos. 2 to 4 and Mr.Talsania appearing for respondent nos. 5 to 8.

4. The short question is whether the resolution of the Executive Council dated 24th December l985 in Item No.4l is contrary to rule l4(l)and (2) of the Standard Code. Rule l4(l)and (2) of the Standard Code reads as follows:

> "l4 Seniority.
>
> (l) The seniority of the employee in a cadre under the University or the college under same management shall be determined on the basis of continuous service in that cadre. The date of joining the service on probation or as the case may be, the date of promotion shall be taken as the date of continuous service for this purpose. The service rendered by an employee in other recognised institution or affiliated college under the same management, whether aided or unaided, or in the office of the management shall be treated as foreign service and the same shall be counted for seniority.

(2) The employee confirmed in a permanent post shall rank higher to that appointed in officiating capacity.The seniority of the employee confirmed in a cadre shall be determined on the basis of the date of confirmation in that cadre".

5. On a plain reading of the rule it is clear that seniority should be on the basis of initial and continuous appointment. The impugned resolution of 24th December l985 merely extends the benefit of continuity of service and condones artificial brakes in the case of an employee of the University of Bombay from l957 and thereafter. We do not find anything in rule l4 to preclude the University from condoning artificial brakes in service and recognising seniority of an employee on the basis of date of their continuous appointment in that cadre. Sub-rule (2) of rule l4 on which the learned counsel for the petitioner placed heavy reliance does not prevent the University from condoning the artificial brakes and in recognising the services of temporary employee from his original appointment.But that apart the present petition is also liable to be dismissed on the ground of gross delay and latches. The impugned

resolution of the Executive Council was passed on 24th December l985 whereas the present petition is filed in l99l i.e. after nearly 6 years . In the circumstances no relief can be granted to the petitioner.Petition is accordingly dismissed.